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DELTA STEWARDSHIP COUNCIL

A California State Agency

November 6, 2015

Chair
Randy Fiorini

Eric R. Butler
Chief of the Projects and Environmental Branch
Central Valley Flood Protection Board
3310 El Camino Avenue, 1st Floor, Room 151
Sacramento, CA 95821
Email: Eric.Butler@water.ca.gov

Members
Aja Brown
Frank C. Damrell, Jr.
Phil Isenberg
Patrick Johnston
Mary Piepho
Susan Tatayon

Executive Officer
Jessica R. Pearson

RE: Proposed Updates to the Board's California Code of Regulations, Title 23, Division 1, Waters

Dear Mr. Butler:

The Delta Stewardship Council (Council) appreciates the opportunity to provide comments on the proposed updates to the Central Valley Flood Protection Board's (CVFPB's) California Code of Regulations, Title 23, Division 1, Waters. The proposed changes will update the current standards of the CVFPB for governing the design and construction of proposed works within the CVFPB's jurisdiction and bring Title 23 Regulations into conformance with current CVFPB procedures and practices. We appreciate that this effort will help address several common goals of our agencies namely, to protect people, property, State interests, and the ecosystem in the Delta.

We offer the following comments and recommendations for the proposed updates for your consideration:

Delta Plan Consistency for the Application Procedures (Article 3)

The Council has specific regulatory and appellate authority over certain actions that take place in the whole or in a part of the Delta, known as "covered actions". To this end, the Delta Plan contains a set of regulatory policies with which state and local agencies are required to be consistent with as of September 1, 2013. The Delta Reform Act established a certification process for compliance with the Delta Plan (Water Code Section 85022). The CVFPB may wish to consider including the covered action determination process as a part of the permit application and the covered action checklist as one appendix of the permit application packet. The checklist can be found at (<http://deltacouncil.ca.gov/sites/default/files/2014/11/2014-11-25-Covered-Actions-Checklist.pdf>).

Council staff would like to offer our assistance to your agency and the permit applicant in determining whether the proposed activity meets the statutory definition of a "covered action" and, as such, would require a certification of consistency. The following recommended language can be used in the permit application as a reminder for the permit applicant:

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

“Note to CEQA Lead Agencies/Delta Plan Consistency Regulations.”

If the proposed project will occur in whole or part in the Delta, you should determine if it meets the definition of a “covered action” under Water Code Section 85057.5 and 23 California Code of Regulations Section 5001(j). If the project is a covered action, prior to commencing implementation, you must file with the Delta Stewardship Council a certification demonstrating consistency with the regulatory policies of the Delta Plan. (For additional information regarding the Certificate of Consistency and the Covered Action process, please visit the Delta Stewardship Council’s website: <http://deltacouncil.ca.gov/covered-actions>).

Designated Floodways (Article 5) Within and Upstream of the Delta

We appreciate your agency’s effort to preserve the integrity and function of flood protection systems in the Central Valley. The Council shares the same concerns that the carrying capacity of the existing flood control system is diminished by encroachments into floodways, critical floodplains and existing floodplains, and how local land use policies guiding development in floodways are not consistent across Delta counties.

Delta Plan Policy RR P3 (23 California Code of Regulations Section 5014) currently states that no encroachment shall be allowed or constructed in a floodway unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety. Also, **Delta Plan Recommendation RR R7** recommends that the CVFPB evaluate whether additional areas both within and upstream of the Delta should be designated as floodways. We understand the CVFPB does not plan to modify its current jurisdiction over the regulated streams or change boundaries of designated floodways. However, we encourage the CVFPB to consider designating additional floodways for the areas within and upstream of the Delta given the anticipated effects of climate change and concerns that the existing system is already at suboptimal capacity for these areas.

Council staff welcomes any opportunities to coordinate with CVFPB staff during the process of updating the Title 23 Regulations as well as on other activities that may affect the Delta. If you have questions or would like to discuss the comments presented here, please feel free to contact me or my staff, You Chen (Tim) Chao at YouChen.Chao@deltacouncil.ca.gov or (916) 445-0143.

Sincerely,

A handwritten signature in blue ink that reads "Cindy Messer". The signature is fluid and cursive, with the first name "Cindy" being more prominent than the last name "Messer".

Cindy Messer
Deputy Executive Officer
Delta Stewardship Council